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**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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**COMMONWEALTH EDISON COMPANY** :  
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**Petition to implement a competitive** : **Docket No. 05-0159**  
**procurement process by establishing Rider CPP,** :  
**Rider PPO-MVM, Rider TS-CPP and revising** :  
**Rider PPO-MI** :  
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**REPLY BRIEF ON EXCEPTIONS**  
**OF**  
**THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO**

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DATE: December 23, 2005

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Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO, by its attorneys GIORDANO & NEILAN, LTD., and hereby files its Reply Brief on Exceptions in this proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”).

**REPLY TO COMED EXCEPTION 4:**  
**NONRESIDENTIAL SPACE HEATING CUSTOMERS MITIGATION**

The record in this case is clear: nonresidential space heating customers will face rate shock from a rate increase of between 27.2% (at an auction price of 5 cents per kilowatt-hour (“kWh”)) and 46.5% (at an auction price of 6 cents per kWh) in 2007 if a rate mitigation plan is not adopted for these customers. (BOMA Ex. 2.1). Moreover, the record in this case also establishes that the rate increase for nonresidential space heating customers will be 10.7% greater than the increase for nonresidential, non-space heating

customers in the absence of rate shock mitigation. (BOMA Corr. Ex. 4.0, pg. 3, ll. 51-56). Based on this compelling evidence, the Proposed Order concludes that BOMA's proposal to include nonresidential space heating customers under 3 MW as a subgroup in the implementation of Commission Staff's rate mitigation plan is appropriate in order to protect nonresidential space heat customers from "unreasonably large rate increases." (Proposed Order, pp. 227-228).

Throughout this entire case, Commonwealth Edison Company ("ComEd") has never challenged, much less rebutted, the impending rate shock facing nonresidential space heating customers post-2006. (BOMA Corr. Ex. 4.0, pg. 2, ll. 23-32; ComEd In. Br., pp. 167-169; pp. 170-171). However, ComEd has consistently opposed any efforts to mitigate this rate shock. (ComEd Ex. 13.0, pp. 56-58, ll. 1234-1268; ComEd Ex. 21.0, pp.44-46; ll. 1019-1059)

In its Brief on Exceptions, ComEd takes its zealous opposition to any form of rate shock mitigation for nonresidential space heating customers to a new and extreme level. (ComEd BoE, pp. 42-46). In its Exception 4, ComEd goes so far as to totally distort the Proposed Order's clearly stated conclusion on rate shock mitigation for nonresidential space heating customers by quoting only half of the conclusion from the Proposed Order stating that the Proposed Order approves "BOMA's alternative proposal to create a separate subgroup for [Rider 25] nonresidential space heat customers in the context of the [Staff] mitigation plan..." (ComEd BoE, pg. 42, quoting Proposed Order, pg. 227). ComEd then goes on to use this incomplete quote as the basis for its statement that the Proposed Order's approval of BOMA's proposal is "understood" by ComEd to be limited to nonresidential space heating customers falling within the CPP-B auction

segment (i.e., nonresidential space heating customers with peak demands under 400 kW).

(ComEd BoE, pg. 43). The full quote from the Proposed Order is as follows:

However, BOMA's alternative proposal, to create a separate subgroup for nonresidential space heat customers in the context of the rate mitigation plan is essentially unopposed. Additionally, the Commission believes that for the same reasons the rate mitigation plan was previously adopted in this order, it is appropriate to protect nonresidential space heat customers under 3 MW from unreasonably large rate increases, BOMA's alternative proposal should therefore be adopted.

(ComEd BoE, pg. 43, footnote 9, quoting Proposed Order, pp. 227-228, *emphasis added*).

ComEd's Exception 4 improperly cuts the Proposed Order's conclusion in half in order to distort its otherwise clear and unambiguous intent. The Proposed Order in no way limits the inclusion of nonresidential space heating customers in Commission Staff's rate mitigation plan to only those nonresidential space heating customers under 400 kW that are eligible for the CPP-B auction product. ComEd's alleged "understanding" that the Proposed Order implies such a limitation is a total misstatement of the express language of the Proposed Order.

ComEd also argues that incorporating into Commission Staff's rate mitigation plan those nonresidential space heating customers not falling within the group being offered the CPP-B auction product is inconsistent with the Proposed Order's rejection of BOMA's proposal to include the 400 kW – 1 MW and 1-3 MW customer classes in the group being offered the CPP-B auction product. (ComEd BoE, pg. 43). ComEd's argument is utterly without merit and only confuses matters that are clear in the Proposed Order.

The essential feature of BOMA's proposal was the inclusion of all nonresidential space heating customers under 3 MW in the nonresidential space heating subgroup under

Commission Staff's rate mitigation plan, regardless of which auction product the Commission determines should be offered to the 400 kW – 1 MW and 1 – 3 MW customer classes. (Proposed Order, pg. 226; BOMA Reply Br., pg. 15). The Proposed Order clearly and justifiably adopts BOMA's proposal. (Proposed Order, pp. 227-228).

Nevertheless, ComEd makes one final stab at rate shocking nonresidential space heating customers by arguing that "Rider 25 [nonresidential space heating] customers are not customers under a single rate, but rather under multiple rates, and, thus, giving them special treatment within Staff's mitigation proposal is unjustified for that additional reason." (ComEd BoE, pg. 44). This argument ignores the fact that ComEd has treated nonresidential space heating customers as a separate subgroup throughout the competitive transition period for purposes of applying a special Rider 25 Customer Transition Charge ("CTC") to these customers. (BOMA Cross Exhibit 5, attached to this Reply Brief on Exceptions as Attachment A). This special Rider 25 CTC was applicable to nonresidential space heating customers regardless of the rates under which those customers were being served. (BOMA Cross Exhibit 5). Therefore, this final argument by ComEd against the Proposed Order's conclusion is in reality nothing more than a futile attempt by ComEd to mask its groundless opposition to any form of rate shock mitigation for nonresidential space heating customers.

### **CONCLUSION**

In order to prevent massive rate shock for all under 3 MW nonresidential space heating customers, the Commission must accept the Proposed Order's conclusion that Commission Staff's rate mitigation plan be applied to these customers.

WHEREFORE, for the above-stated reasons, BOMA respectfully requests that the Commission adopt in its Final Order the Conclusion set forth by the Administrative Law Judge in Section VII.C.2. - Non-Residential Space Heating Customers on pages 227 to 228 of the Proposed Order.

Respectfully submitted,

**BUILDING OWNERS AND  
MANAGERS ASSOCIATION OF  
CHICAGO**

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